IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6294 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.V. PILLAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6294 of 2002

MR ANANT S DAVE for Petitioner No. 1

MR DABHI, Ld. AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/02/2003

ORAL JUDGEMENT

1. Rule. Mr.Dabhi, learned AGP appearing on behalf of respondents No.1 and 2 waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is serving in the Forest Department. He was

placed under suspension on 1-10-1983. Thereafter on 15-10-1983 he was served with charge-sheet. On 30-1-1985, the Inquiry Officer submitted his report and found that certain charges are proved against the petitioner. On 24-9-1985 the petitioner was given a show-cause notice by the Disciplinary Officer which came to be replied by the petitioner and ultimately on 15-3-1986 the petitioner was dismissed from the service. On 7-2-1987 the appeal came to be filed by the petitioner against the order of dismissal before the Gujarat Civil Services Tribunal and the Tribunal directed to hold inquiry de novo and the appeal of the petitioner came to be allowed to that extent. The inquiry was held again and on 30-11-1990 the Inquiry Officer at the conclusion of the inquiry exonerated the petitioner from the charges on the ground that the charges are not proved. However, the Disciplinary Authority recorded the reasons for disagreement and issued notice for punishment to the petitioner as per the notice dated 6-9-1992, calling upon the petitioner to show as to why the petitioner should not be compulsorily retired. The petitioner filed reply and the Disciplinary Authority instead of retiring the petitioner compulsorily, took the decision of withholding five increments with future effect by way of punishment ultimately as per the decision dated 13-3-2000. The petitioner preferred appeal before the Chief Conservator of Forest against the decision of imposing punishment of withholding five increments with future effect. In the said appeal the Appellate Authority treated the period of suspension on duty for the purpose of pension. However, simultaneously, the Appellate Authority also took decision to recover the amount of Rs.50,233/= from the petitioner by enhancing the penalty. It is under these circumstances, the petitioner has approached before this Court.

3. The contention raised on behalf of the petitioner is that no opportunity of hearing has been given, nor was the petitioner put to the notice regarding the enhancement or modification in the order of penalty by enhancing the penalty.

4. Mr.Dabhi, learned AGP, is not in a position to show as to whether any show-cause notice was given for enhancement of the penalty in the proceedings of the appeal by the Appellate Authority or not.

5. I find that the point of breach of principles of natural justice by the Appellate Authority deserves consideration. It appears that the Appellate Authority, while deciding the appeal, could modify the order passed

by the Disciplinary Authority and such power can also be read for enhancement of the penalty, provided the petitioner or the employee concerned is put to the notice or opportunity of hearing is given to him for enhancement of penalty. In the present case, no such notice has been given to the petitioner, nor had the petitioner any opportunity to put forward his case as to why the penalty should not be enhanced in the appeal. Therefore, it is clear that the order is passed by the Appellate Authority without giving any opportunity of hearing to the petitioner in respect to enhancement of penalty. In my view, the reasons recorded by the Appellate Authority even for the purpose of giving benefits to the petitioner for the period of suspension to be treated as the period on duty for pension is co-related and are inter-connected and, therefore, it can be said that the whole order passed by the Appellate Authority dated 1-4-2002 is vitiated on account of the enhancement of the penalty and also inter-connected reasons recorded for treating the period of suspension as on duty for the purpose of pension.

6. In view of the aforesaid discussion, the impugned order dated 1-4-2002 Annexure "A" passed by the Additional Chief Conservator of Forest, Gujarat State, Gandhinagar is quashed and set aside with the clarification that the appeal shall be restored to file again and the Appellate Authority shall be at liberty to decide the appeal in accordance with law after giving opportunity of hearing to the petitioner. It is made clear that if the Appellate Authority is inclined to consider the matter for enhancement of penalty, a specific notice shall be given to the petitioner and opportunity of hearing shall also be given in this regard to the petitioner and thereafter only the final order in appeal shall be passed in accordance with law. It is made clear that all other contentions are kept open.

7. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

4-2-2003 (Jayant Patel, J.)

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